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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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MATHEW LEE WILLIAMS,	Case No. 3:16-cv-00505-MMD-VPC
<div style="border-left: 1px solid black; padding-left: 10px;">Petitioner,</div>	ORDER
v.	
BRIAN E. WILLIAMS SR., <i>et al.</i> ,	
<div style="border-left: 1px solid black; padding-left: 10px;">Respondents.</div>	

This case is a petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254, by Mathew Lee Williams, a Nevada prisoner serving a sentence of ten years to life in prison on a conviction of lewdness with a child under the age of 14 years. See Petition for Writ of Habeas Corpus (ECF No. 6). There are, before the Court, a motion to dismiss filed by the respondents and a motion for stay filed by Williams. The Court will grant the motion to dismiss in part and deny it in part, dismissing part of Ground 1 of Williams’ petition, and the Court will deny the motion for stay as moot. The Court will set a schedule for respondents to file an answer, and Williams a reply.

Williams was convicted, upon a guilty plea, in Nevada’s Second Judicial District Court, on November 29, 2012. (See Judgment, Respondents’ Exhibit 24 (ECF No. 15-24).)

Williams appealed to the Nevada Supreme Court from his conviction, and the Nevada Supreme Court affirmed on September 18, 2013. (See Appellant’s Opening Brief, Respondents’ Exhibit 51 (ECF No. 16-20); Order of Affirmance, Respondents’ Exhibit 57 (ECF No. 16-26).)

1 Williams then filed a petition for writ of habeas corpus in the state district court,
2 and that court denied the petition on November 12, 2015. (See Petition for Writ of Habeas
3 Corpus (Post-Conviction), Respondents' Exhibit 61 (ECF No. 17); Order of State District
4 Court, Respondents' Exhibit 74 (ECF No. 17-13).) Williams appealed to the Nevada
5 Supreme Court from the denial of the petition, and the Nevada Supreme Court affirmed
6 on July 13, 2016. (See Appellant's Opening Brief, Respondents' Exhibit 82 (ECF No. 17-
7 21); Order of Affirmance, Respondents' Exhibit 89 (ECF No. 17-28).)

8 Williams initiated this federal habeas corpus action on August 29, 2016. (See
9 Petition for Writ of Habeas Corpus (ECF No. 6).) Williams' petition includes two claims.
10 In Ground 1, he asserts that, in violation of his federal constitutional rights, he received
11 ineffective assistance of both his trial counsel and his state post-conviction counsel. (See
12 *id.* at 3-4.) In Ground 2, Williams asserts that his sentence violates his federal
13 constitutional right to be free of cruel and unusual punishment. (See *id.* at 5-6.)

14 On January 11, 2017, respondents filed a motion to dismiss (ECF No. 14). In that
15 motion, respondents contend that, to the extent Ground 1 is based on alleged ineffective
16 assistance of Williams' state post-conviction counsel, that claim is unexhausted in state
17 court, and, at any rate, is not cognizable in this federal habeas corpus action. (See Motion
18 to Dismiss (ECF No. 14) at 4, 6.) Respondents also contend in their motion to dismiss
19 that Ground 2 is unexhausted in state court. (See *id.* at 4-5.)

20 Williams responded to the motion to dismiss, on February 17, 2017, by filing a
21 motion for stay (ECF No. 21), in which he requests that this case be stayed while he
22 returns to state court to exhaust any unexhausted claims. Respondents filed an
23 opposition to the motion for stay on February 28, 2017 (ECF No. 22), and Williams filed
24 a reply on March 13, 2017 (ECF No. 23).

25 Ground 1, to the extent based on alleged ineffective assistance of Williams' state
26 post-conviction counsel, is not cognizable in this federal habeas corpus action. See
27 *Coleman v. Thompson*, 501 U.S. 722, 752 (1991). As there is no federal constitutional
28 right to an attorney in state post-conviction proceedings, there is no constitutional right to

1 effective assistance of such counsel. See *id.* (“There is no constitutional right to an
2 attorney in state post-conviction proceedings. Consequently, a petitioner cannot claim
3 constitutionally ineffective assistance of counsel in such proceedings.” (citation omitted));
4 see also *Wainwright v. Torna*, 455 U.S. 586, 587-88 (1982) (where there is no
5 constitutional right to counsel there can be no deprivation of the constitutional right to
6 effective assistance of counsel). For this reason, the Court will grant respondents’ motion
7 to dismiss Ground 1 to the extent it is based on alleged ineffective assistance of Williams’
8 state post-conviction counsel.

9 Turning to the question of Williams’ exhaustion of his state court remedies, a
10 federal court may not grant habeas corpus relief on a claim not exhausted in state court.
11 28 U.S.C. § 2254(b). The exhaustion doctrine is based on the policy of federal-state
12 comity, and is intended to allow state courts the initial opportunity to correct constitutional
13 deprivations. See *Picard v. Conner*, 404 U.S. 270, 275 (1971). To exhaust a claim, a
14 petitioner must fairly present the claim to the highest state court, and must give that court
15 the opportunity to address and resolve it. See *Duncan v. Henry*, 513 U.S. 364, 365 (1995)
16 (per curiam); *Keeney v. Tamayo-Reyes*, 504 U.S. 1, 10 (1992). A claim is fairly presented
17 to the state court if, before that court, the petitioner describes the operative facts and legal
18 theory upon which the claim is based. See *Anderson v. Harless*, 459 U.S. 4, 6 (1982) (per
19 curiam); *Picard*, 404 U.S. at 275; *Batchelor v. Cupp*, 693 F.2d 859, 862 (9th Cir. 1982).

20 With regard to Ground 1, as is explained above, the Court will grant respondents’
21 motion to dismiss Ground 1 to the extent it is based on alleged ineffective assistance of
22 Williams’ state post-conviction counsel because that part of Ground 1 is not cognizable
23 in a federal habeas action. As that is the same part of Ground 1 that respondents contend
24 is unexhausted in state court (see Motion to Dismiss at 4), its dismissal renders
25 respondents’ argument regarding the exhaustion of Ground 1 moot, and the Court need
26 not address that issue.

27 Ground 2 is Williams’ claim that his sentence violates his federal constitutional right
28 to be free of cruel and unusual punishment. Respondents argue that Ground 2 is

1 unexhausted, at least in part, because it includes arguments not asserted when he made
2 a similar claim on his direct appeal to the Nevada Supreme Court. (See Motion to Dismiss,
3 at 4-5.) In particular, respondents argue that Williams argues in this case, but did not
4 argue in state court, that his sentencing did not properly take into account his mental
5 health and drug addiction. (See *id.*) The Court disagrees with respondents' analysis.
6 Williams did, on his direct appeal in state court, include, in his claim regarding the
7 constitutionality of his sentence, argument concerning his mental health and drug
8 addiction. (See Appellant's Opening Brief, Respondents' Exhibit 51 at 3-4 (ECF No. 16-
9 20 at 10-11).) Williams argued on that appeal in state court that "his youth, mental health
10 issues, and terrible childhood were relevant mitigation factors which should have been
11 determinative when imposing the possible sentence." (*Id.* at 13 (ECF No. 16-20 at 20).)
12 Where the petitioner's presentation of a claim changes in federal court, the claim is still
13 considered fairly presented, and exhausted in state court, so long as the new allegations
14 in federal court do not fundamentally alter the claim. See *Dickens v. Ryan*, 740 F.3d 1302,
15 1318-19 (9th Cir.2014) (en banc). Williams has not fundamentally altered Ground 2 in
16 federal court. Ground 2 is exhausted.

17 Therefore, the Court will grant respondents' motion to dismiss in part: Ground 1
18 will be dismissed, as not cognizable in federal court, to the extent it is based on alleged
19 ineffectiveness of Williams' state post-conviction counsel; in all other respects,
20 respondents' motion to dismiss will be denied. This renders moot Williams' motion for
21 stay, as the Court finds that there are no viable claims yet to be exhausted in state court;
22 the motion for stay will be denied on that ground.

23 It is therefore ordered that respondents' Motion to Dismiss (ECF No. 14) is granted
24 in part and denied in part. Ground 1 is dismissed, as not cognizable in federal court, to
25 the extent it is based on alleged ineffectiveness of Williams' state post-conviction counsel.
26 In all other respects the motion to dismiss is denied.

27 It is further ordered that petitioner's Motion Requesting Stay and Abeyance (ECF
28 No. 21) is denied, as moot.

1 It is further ordered that respondents will have ninety (90) days from the entry of
2 this order to file an answer, responding to the remaining claims in the habeas petition –
3 Ground 1, to the extent based on alleged ineffective assistance of petitioner's trial
4 counsel, and Ground 2. Petitioner will, thereafter, have ninety (90) days to file a reply to
5 respondents' answer.

6 DATED THIS 18th day of April 2017.

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10 MIRANDA M. DU
11 UNITED STATES DISTRICT JUDGE
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